

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge Wiley Y. Daniel

Criminal Case No. 18-cr-00215-WYD

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. JOSE ALFREDO MENDOZA-RAMOS, a/k/a Alfredo Argueta,

Defendant.

ORDER DENYING MOTION TO SUPPRESS

The Government charged Defendant Jose Alfredo Mendoza-Ramos (“Mendoza”) with illegal re-entry after deportation. See 8 U.S.C. § 1326(a). Mendoza moves to suppress statements he made to United States Immigration and Customs Enforcement (“ICE”) officers after his arrest, the ICE officers’ identification of him after his arrest, the fingerprints ICE officers took after his arrest, and documents in his immigration administrative file (“A-file”) related to the statements, identification, and fingerprints. (ECF No. 17 at 1 n.1). The parties briefed their positions on the motion to suppress (ECF Nos. 17 and 18), and I held an evidentiary hearing on December 11, 2018. For the reasons explained below, I deny the motion to suppress.

I. FACTUAL FINDINGS

At the December 11, 2018 evidentiary hearing, I heard the testimony of Jerimee Joyner, the ICE deportation officer who arrested Mendoza, and accepted exhibits. From that testimony and those exhibits, I find as follows.

On February 9, 2018, Officer Joyner was conducting surveillance on Darwin Hernandez-Cruz, a previously removed alien, in Hernandez-Cruz's apartment parking lot. Officer Joyner ran license plates of vehicles in the parking lot so that he could determine the owners of the vehicles by cross-referencing the plates with a registration database. Officer Joyner knew Hernandez-Cruz was in the roofing business, and he zeroed in on two vehicles that met the description of what a roofer would drive.

One vehicle was a white van with a ladder rack, and the other vehicle was a black pickup truck. Officer Joyner ran the license plate of the white van and accidentally discovered the van was registered to Mendoza. When Officer Joyner ran the truck's license plate, he learned that the Aurora Police Department had issued a citation to the driver of the truck in October 2015. (Ex. 12 at 1). He obtained the report. The report indicated the Aurora Police Department issued the citation to Mendoza while he was driving the truck. The report also contained a picture of Mendoza and his date of birth. (*Id.* at 2, 6).

Officer Joyner then acquired Mendoza's A-file from the Department of Homeland Security. Mendoza's A-file contained his immigration history, which included the following documents:

- an October 26, 2007 order of removal by an immigration judge, (Ex. 10);
- warrants of removal or deportation, which demonstrated an ICE field officer removed Mendoza from the United States on October 30, 2007, January 23, 2009, and February 21, 2012, (Exs. 5, 7, 9);
- multiple sworn statements from Mendoza stating his date of birth, which matched the date of birth in the Aurora Police Department report, (Ex. 6 at 2; Ex. 8 at 2); and
- multiple sworn statements from Mendoza indicating that he had no lawful status in the United States, (Ex. 6 at 2; Ex. 8 at 2).

Mendoza's 2007, 2009, and 2012 warrants of removal or deportation included his photograph taken at the time of his removal. Officer Joyner testified that the A-file provided him with at least four photographs of Mendoza taken from 2007 through 2012. Mendoza's alien registration number also consistently appeared on several documents in the A-file. An alien registration number is an identification number assigned to aliens as social security numbers are assigned to citizens and lawful residents. In addition to acquiring Mendoza's A-files, Officer Joyner reviewed several databases maintained by different governmental agencies, including ICE, to determine if Mendoza had been issued a visa to come to the United States. Officer Joyner testified that the databases he searched would have indicated if Mendoza had received permission to return to the United States. However, Officer Joyner did not find any information related to Mendoza's legal return to the United States on the databases.

On February 14, 2018, Officer Joyner created a field operations worksheet, which is a document ICE officers fill out before arresting an individual. The field operations worksheet listed Mendoza's gender, date of birth, age, height, weight, eye color, hair color, and distinguishing physical characteristics. (Ex. 2 at 1). The worksheet also included Mendoza's picture, his criminal history, identified his occupation as a painter, and noted his association with the white van and black truck. (*Id.*). Officer Joyner testified that he recalled pulling Mendoza's occupation from a database listing criminal charges for individuals since their date of deportation.

Officer Joyner's supervisor approved the field operations worksheet which allowed him to open a new investigation into Mendoza and arrest him as a previously removed felon with no record of legal re-entry into the United States. For the next two

weeks, Officer Joyner conducted surveillance on Mendoza for approximately three to four hours each week.

On February 28, 2018, Officer Joyner and another ICE officer stationed their car across the street from the apartment's parking lot to initiate surveillance on Mendoza. At approximately 7:45 a.m., Officer Joyner observed a man leaving the apartment complex and walking towards the parking lot. Officer Joyner used the binoculars in his vehicle to look at the man. When Officer Joyner saw the man through the binoculars, he was ninety percent sure the man was Mendoza. He arrived at this conclusion by comparing his knowledge of Mendoza's height, weight, and appearances in the photographs, and his physical observation of the man in the parking lot.

Once Mendoza arrived in the parking lot, Officer Joyner watched him move tools back and forth between the white van and the black truck. He watched this activity for between five and ten minutes. Eventually, Mendoza climbed into the driver's seat of the truck and began driving.

Mendoza picked up another man, and the two of them made their way to a paint store. Officer Joyner followed him and called other ICE officers to help him arrest Mendoza. Officer Joyner parked across the street and used his binoculars to watch Mendoza. (See Ex. 14). Officer Joyner had a clear view of Mendoza's side profile as he exited the truck and entered the store.

Officer Joyner, along with three or four more officers, went over to the store's parking lot and waited for Mendoza to come outside. The officers parked their vehicles behind the pickup truck so it was boxed in. When Mendoza walked out of the front door, the officers approached him with their weapons drawn, aggressively identified

themselves, and arrested him. Officer Joyner asked Mendoza his name and he responded, “Jose Mendoza-Ramos.” (Ex. 1 at 3). Then Officer Joyner placed Mendoza in handcuffs.

Officer Joyner transported Mendoza to an immigration processing center where he was fingerprinted. After being fingerprinted, ICE employees *Mirandized* Mendoza and he signed a sworn statement acknowledging that he had previously been removed from the United States, had been convicted of a serious criminal offense, and had not received permission to reenter the United States. (Ex. 4 at 2).

Officer Joyner wrote a report after Mendoza was arrested designated as a Form I-213. (Ex. 1 at 3). The Form I-213 provided a general description of Officer Joyner’s investigation and his encounter with Mendoza. Specifically, the Form I-213 stated

All approached the two subjects displaying their ICE badges and Police ensignia [sic]. Officer gave verbal commands and identified [sic] themselves as immigration officers. At that time JOYNER asked the individual his name and he provided ‘Jose Mendoza-Ramos’. *At that time, MENDOZA-RAMOS was positively identified as the subject for the arrest, and placed in handcuffs.*

(*Id.* (emphasis added)). The Form I-213 is filled out at the time ICE arrests an individual and takes him or her into custody. The purpose of the form is to document how the individual was taken into custody and the circumstances relating to their immigration and criminal history.

II. ANALYSIS

Mendoza argues that the italicized statement in Officer Joyner’s Form I-213 indicates that he was unaware of Mendoza’s identity until after Mendoza was arrested and identified himself. (See ECF No. 17 at 4). He also argues that Officer Joyner “arrested Mr. Mendoza with insufficient information about his identity” and did not have

probable cause to arrest Mendoza. (*Id.* at 5-6). Mendoza bases these arguments on his belief that Officer Joyner's in-court testimony is not credible, and the only reliable document is the Form I-213. Because Officer Joyner arrested Mendoza without a warrant or probable cause, Mendoza argues that his statements to the ICE officers, the ICE officers' identification of him, and his fingerprints taken subsequent to his arrest as well as the documents in his A-file referencing his identification, statements, and fingerprints should be suppressed.

A. Burden of Proof

On a motion to suppress evidence derived from a warrantless seizure, the Government bears the burden to demonstrate that the seizure was nonetheless lawful. *See United States v. Maestas*, 2 F.3d 1485, 1492 (10th Cir. 1993) (“[W]hen the defendant challenges a warrantless search or seizure the government carries the burden of justifying the agents’ actions.”); *United States v. Argueta-Mejia*, 615 Fed. App’x 485, 487 (10th Cir. 2015). “The controlling standard of proof at a suppression hearing is proof by a preponderance of the evidence.” *United States v. Shrum*, 908 F.3d 1219, 1229 n.7 (10th Cir. 2018).

B. Probable Cause to Arrest

The Fourth Amendment protects “[t]he right of the people to be secure in their persons . . . against unreasonable . . . seizures.” U.S. Const. amend. IV. Before assessing whether the actions of law enforcement constituted an unreasonable seizure, a court determines whether a seizure occurred. There are three types of police encounters: (1) a consensual encounter, which does not constitute a seizure and therefore does not implicate the Fourth Amendment; (2) an investigative detention,

which must be justified by reasonable suspicion of criminal activity; and (3) an arrest, which must be justified by probable cause. *See United States v. Roberson*, 864 F.3d 1118, 1121 (10th Cir. 2017); *United States v. Hernandez*, 847 F.3d 1257, 1263 (10th Cir. 2017). Mendoza asserts that his encounter with the ICE officers “clearly constituted an arrest,” and the Government does not dispute this assertion. (ECF No. 17 at 3). Therefore, a seizure occurred and only the third category of police encounters applies.

When law enforcement executes a warrantless arrest, the “arrest must be supported by probable cause.” *United States v. Vazquez-Pulido*, 155 F.3d 1213, 1216 (10th Cir. 1998). Probable cause exists where

the facts and circumstances within the arresting officer’s knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution to have the belief that an offense has been or is being committed by the person to be arrested. This is an objective standard, and thus the subjective belief of an individual officer as to whether there was probable cause for making an arrest is not dispositive. Whether a reasonable officer would believe that there was probable cause to arrest in a given situation is based on the totality of the circumstances.

Koch v. City of Del City, 660 F.3d 1228, 1239 (10th Cir. 2011) (internal quotation marks, citations, and alterations omitted); *see also Vazquez-Pulido*, 155 F.3d at 1216.

There is no Fourth Amendment violation if a law enforcement officer arrests an individual without a warrant if the arrest is supported by probable cause. *See, e.g., United States v. Watson*, 423 U.S. 411, 417 (1976) (holding that probable cause is sufficient for a public arrest to satisfy the Fourth Amendment); *Carroll v. United States*, 267 U.S. 132, 156 (1925) (“The usual rule is that a police officer may arrest without warrant one believed by the officer upon reasonable cause to have been guilty of a felony . . .”).

For a defendant to be guilty of the crime of reentry after removal, in violation of 8 U.S.C. § 1326(a), the Government must prove (1) the defendant was an alien at the time alleged in the indictment; (2) the alien had previously been removed from the United States; (3) the defendant was found in the United States after knowingly entered the country; and (4) the defendant had not received the consent of the proper legal authority to reapply for admission to the United States. *See United States v. Martinez-Morel*, 118 F.3d 710, 713 (10th Cir. 1997); 10th Cir. Model Crim. Jury Instr. § 2.05 (2018). I find that Officer Joyner credibly testified he had probable cause to believe Mendoza had violated 8 U.S.C. § 1326(a) when he arrested Mendoza outside of the paint store.

I find that Officer Joyner had probable cause to believe Mendoza was an alien who was previously removed, satisfying elements one and two. He knew this from the 2007 order of removal and the 2007, 2009, and 2012 warrants of removal or deportation which indicated that Mendoza had previously been removed from the United States. Mendoza's multiple sworn statements also informed Officer Joyner that Mendoza had previously not had lawful status in the United States. Finally, Mendoza's A-file consistently listed his alien registration number which is a number assigned to aliens.

I also find that Officer Joyner had probable cause to believe the third element was satisfied because he identified Mendoza walking through the apartment's parking lot. Officer Joyner testified that from his vantage point from the street across from the parking lot, he was ninety percent sure the man was Mendoza. Officer Joyner knew Mendoza's approximate height, weight, age, hair color, and distinguishing facial characteristics from his investigation into Mendoza. (Ex. 2 at 1). He had obtained at

least four photographs of Mendoza taken from 2007 to 2012 from Mendoza's A-file, and he found another photograph of Mendoza in the 2015 Aurora Police Department citation report. (Ex. 12 at 1). Officer Mendoza could be confident that the man he was surveilling was Mendoza by comparing his knowledge of Mendoza's physical characteristics and appearance with his physical observation of the man in the parking lot.

Officer Joyner continued to use his binoculars to watch the man move tools back and forth from the white van to the black truck, providing him with more time to confirm his belief that the man was Mendoza. Officer Joyner knew the white van was registered to Mendoza and that Mendoza received a citation while driving the black pickup truck, and the man's access to the white van and black truck provided another reason to confirm Officer Joyner's suspicion that the man was Mendoza. He believed Mendoza worked as a painter, and followed Mendoza to a paint store. Officer Joyner identified Mendoza again when he got out of the pickup truck to enter the store. Officer Joyner's reasonable belief that the subject he was surveilling was Mendoza is critical to the third element because the "'found in' language in § 1326(a) informs an alien who has been previously deported and returns to the United States without" permission from the appropriate legal authority "that he or she will be *deemed guilty of an offense upon discovery within the United States.*" *United States v. Meraz-Valeta*, 26 F.3d 992, 997 (10th Cir. 1994) (emphasis added), *overruled on other grounds by United States v. Aguirre-Tello*, 353 F.3d 1199 (10th Cir. 2004).

Finally, I find that Officer Joyner had probable cause to believe the fourth element was satisfied because he searched several different databases which would

have indicated if Mendoza had obtained permission to return to the United States, and none of those databases showed Mendoza had lawfully reentered the United States.

C. Officer Joyner's Credibility

Mendoza attacked Officer Joyner's credibility in two ways. First, Mendoza highlighted the differences between Officer Joyner's general recitation of his investigation in the Form I-213 and his specific in-court testimony related to his investigation. Second, Mendoza focused on an incident in 2007 when Officer Joyner signed his supervisor's name on an investigative report without his supervisor's knowledge while working as a child protection investigator in Florida. Officer Joyner was forced to resign for this misconduct.

I find the first argument to be without merit. The history of Officer Joyner's investigation in the Form I-213 is consistent with his in-court testimony. For example, in both places Officer Joyner explained that he ran plates on the white van and black pickup truck, identified the Aurora Police Department report which contained a photograph of Mendoza, and pulled Mendoza's A-file. Officer Joyner's in-court testimony and Form I-213 were also consistent with his field operations worksheet, completed on February 14, 2018. (Ex. 2). The field operations worksheet identified the white van and the black truck as vehicles associated with Mendoza and contained a physical description of Mendoza and a photograph taken from Mendoza's A-file.

Although it is true that the Form I-213 contains less detail about Officer Joyner's investigation than he provided in his oral testimony, I find that Officer Joyner provided a credible explanation for this difference. He testified that the Forms I-213 are primarily used for administrative immigration purposes, and are rarely used in a way that is

equivalent to a police report. Officer Joyner also explained that he did not include certain information in the Form I-213 because some of the information was not relevant to proving Mendoza's immigration status even though it may have been relevant to his investigation. Based on this testimony, Officer Joyner did not have an incentive to write a painstakingly detailed account of his investigation leading to Mendoza's arrest in the Form I-213.

In closing argument, Mendoza targeted the Form I-213's statement that Mendoza was not "positively identified" until after he was arrested and after he identified himself. He argued the phrase "positively identified" in this context establishes that Officer Joyner did not identify Mendoza until after his arrest. I also find this argument to be without merit. Though Officer Joyner may not have been one hundred percent certain he had arrested Mendoza, he testified he was ninety percent sure that the man he followed to the paint store was Mendoza. For purposes of probable cause to effectuate a warrantless arrest, absolute conviction is not the standard. I find that even if Officer Joyner was not "positive" of Mendoza's identity at the time of the arrest, he certainly had probable cause to arrest him based on the information he gathered during his investigation from February 9, 2018 to February 28, 2018, and his observations of Mendoza on the morning of February 28, 2018.

Regarding Mendoza's second argument, the Government disclosed the 2007 incident to the Court on December 10, 2018 after learning about it while preparing Officer Joyner for his testimony. (ECF No. 38). At the December 11, 2018 hearing, I heard *ex parte* arguments from the Government as to whether this incident needed to be disclosed to Mendoza pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio*

v. United States, 405 U.S. 150 (1972), which require disclosure of information that is material to the defense in a constitutional sense. I found that the incident was material and needed to be disclosed to Mendoza because it had some bearing on Officer Joyner's credibility related to the thoroughness of his investigation in this case. See, e.g., *Hatch v. Oklahoma*, 58 F.3d 1447, 1469 (10th Cir. 1995) ("In *Giglio* [], the Supreme Court held that the due process protection announced in *Brady* includes evidence that undermines the credibility of the prosecution's witnesses."), *overruled on other grounds by Daniels v. United States*, 254 F.3d 1180, 1188 n.1 (10th Cir. 2001).

Mendoza argued in closing argument that the 2007 incident impeached Officer Joyner's credibility. He also claimed the 2007 incident further supports his argument that Officer Joyner's in-court testimony was not credible because some of the details of that testimony were omitted from the Form I-213 because the 2007 incident should have taught Officer Joyner to be thorough and accurate in written reports.

Although the 2007 incident is relevant to Officer Joyner's credibility, I find that Officer Joyner's in-court testimony was nonetheless credible. The 2007 incident occurred eleven years before Officer Joyner began investigating Mendoza, he learned the necessity of signing for someone only when authorized to do so, and he has not had any other similar incidents during his career in law enforcement. Perhaps more importantly, the information contained in the Form I-213 and the field operations worksheet, which were both created before Mendoza's arrest, are consistent with Officer Joyner's in-court testimony as explained above. And whatever lessons Officer Joyner may have learned from the 2007 incident about being thorough and accurate in

written reports, I find that Officer Joyner credibly explained why he did not include every detail of his investigation in the Form I-213, also as explained above.

Accordingly, I find that Officer Joyner's warrantless arrest of Mendoza did not violate the Fourth Amendment because the arrest was supported by probable cause. For this reason, I find that evidence of Mendoza's statements to the ICE officers, the ICE officers' identification of him, his fingerprints, and the portions of his A-files related to the statements, identification, and fingerprints should not be suppressed.

III. CONCLUSION

For the reasons set forth above, Defendant's Motion to Suppress Evidence and Statements (ECF No. 17) is **DENIED**.

Dated: January 10, 2019

BY THE COURT:

s/ Wiley Y. Daniel

Wiley Y. Daniel

Senior United States District Judge